In the High Court of Punjab and Haryana, Chandigarh.

Civil Revision No.5122 of 2007

Date of Decision: 15.10.2007

Sardool Singh and Another

…Petitioners

Versus

Sukhbir Singh

…Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Vipin Mahajan, Advocate
for the petitioners.

RAJESH BINDAL, J.

In the present petition, the challenge is to the order dated August 24, 2007 passed by the learned Additional Civil Judge (Senior Division), Gurdaspur, whereby on account of non filing of written statement by the petitioners/defendants, their defence was struck off and the case was put up for evidence of the respondent/plaintiff on January 15, 2008.

For the view I am taking, I do not deem it appropriate to issue notice of motion to the respondent/plaintiff as the same would not only delay the disposal of the present petition but even delay the disposal of suit before the learned Court below.

The case set up by learned counsel for the petitioners is that it was only on July 16, 2007 that the petitioners/defendants were served in the present case. Thereafter, 4-5 dates were fixed by the learned Court below in short duration for filing of written statement by the petitioners/defendants and ultimately on August 24, 2007, the impugned order was passed. It is further

submitted that merely after one month and eight days, the petitioners' defence was struck off. He further submitted that the written statement is ready and in case an opportunity is granted, the same will be filed immediately. He has relied upon judgments of Hon'ble the Supreme Court in **Kailash v. Nanhku and Others JT 2005(4) SC 204, Salem Advocate Bar association, Tamil Nadu v. Union of India JT 2005(6) SC 486** and **M/s R.N.Jadi & Brothers and Others v. Subhashchandra JT 2007(9) SC 165** to submit that Order VIII Rule 1 CPC has been held to be directory in nature and not mandatory.

After hearing learned counsel for the petitioners, I find merit in the contentions raised by him.

It has been consistently opined by Hon'ble the Supreme Court in the judgments referred to above that the Order VIII Rule 1 CPC which provides time for fling of written statement is directory in nature.

In the present case, the defence of the petitioners/defendants had been struck off by not granting them even the period of 90 days for filing written statement. Accordingly, the petition is accepted. The petitioners/defendants are granted four weeks' time to file written statement before the learned trial Court subject to payment of Rs.1,000/- as costs and the case will be proceeded further as per the schedule already fixed by the Court.

(Rajesh Bindal)
Judge

October 15, 2007
"DK"